

June 8, 2015

**VIA FEDEX AND EMAIL (R9FOIA@EPA.GOV)**

United States Environmental Protection Agency, Region 9  
Attention: FOIA Officer, OPPA-2  
75 Hawthorne Street  
San Francisco, CA 94105

**Re: Freedom of Information Act Request**

Dear Freedom of Information Officer:

We respectfully submit this request for information pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). As you might know, President Obama issued an executive memorandum instructing all federal agencies to adopt a presumption of disclosure when administering requests under FOIA:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. (*See* Memorandum from President Obama to the Heads of Executive Departments and Agencies regarding Freedom of Information Act, January 21, 2009).<sup>1</sup>

The United States Attorney General subsequently issued a memorandum to the Executive Departments and Agencies emphasizing that "an agency should not withhold information simply because it may do so legally" and that "whenever an agency determines that it cannot make full disclosure of a requested record, it must consider whether it can make partial disclosure [and] be mindful that the FOIA requires them to take reasonable steps to segregate and release nonexempt information." (*See* Memorandum for Heads of Executive Departments and Agencies, March 19, 2009.)<sup>2</sup>

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<sup>1</sup> This memorandum is available at [http://www.whitehouse.gov/the\\_press\\_office/freedomofInformationAct](http://www.whitehouse.gov/the_press_office/freedomofInformationAct) (last visited June 8, 2015).

<sup>2</sup> This memorandum is available at <http://www.usdoj.gov/ag/foia-memo-march2009.pdf> (last visited June 8, 2015).

### **Definitions**

As used in this request, the term “record(s)” includes, without limitation, any handwriting, typewriting, printing, photostatting, photographing, photocopying, transmitting by electronic mail (“e-mail”) or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. This term includes, but is not limited to, all correspondence, notes, memoranda, and e-mails sent or received directly or by copy.

As used in this request, the term “pertaining to” means, without limitation, in any way mentioning, containing, opining about, constituting, explaining, pertaining to, referring to, alluding to, responding to, elaborating upon, concerning, memorializing, proving, tending to prove, supporting, refuting, evidencing, connected with, commenting on, regarding, discussing, showing, describing, reflecting, analyzing, recording, including, mentioning, setting forth, in respect of, and about.

As used in this request, the terms “you” and “your” shall mean all Divisions of the United States Environmental Protection Agency, Regional 9, and all employees, managers, agents, representatives, investigators, consultants, attorneys, and any other person or entity acting on behalf of the United States Environmental Protection Agency (“USEPA”).

### **Information Requested**

Please provide copies of all records in your possession or control that are responsive to the following categories of information requested:

1. Any and all correspondence pertaining to the State Water Resources Control Board’s (SWRCB) memorandum regarding the “Withdrawal of Approval of the SWRCB Alternative Test Procedure for the Two-Concentration Test Design for NPDES Effluent Testing when using the Test of Significant Toxicity,” dated May 12, 2015.
2. Any and all correspondence pertaining to the notice of withdrawal of approval of the ATP dated February 11, 2015.
3. Any and all correspondence pertaining to the United States District Court Eastern District of California’s ruling in Southern California Alliance of POTWS, et al., v. United States Environmental Protection Agency, et al., Case No. 2:14-CV-01513-MCE-DAD, dated May 15, 2015.
4. Any and all correspondence regarding the Test of Significant Toxicity and Chronic Toxicity.

5. Any and all correspondence with SWRCB or internally within USEPA regarding the SWRCB's draft Toxicity Policy and the proposed contents of the same.

As required by the Act, please provide a response within twenty (20) days from the receipt of this letter, stating your determination regarding this request. See 5 U.S.C. § 552(a)(6)(A).

Should you decide any of the requested material is exempt from disclosure under the Act, please describe in detail the material withheld and specify the legal basis and authority for withholding the requested material. Such description should include, but need not be limited to: the type of record and number of pages; the full name and title of the author of the record; the date of the record; the full name and title of the addressee of the record; the full name and title of all persons to whom the record was circulated; the title, "re" line, and headings from within the record, unless doing so would reveal properly exempted material; a detailed description of the entire content of the record; the custodian of the record at the time of this request; and the number of the record category to which the record responds. See 5 U.S.C. § 552(b); *Coastal Corp. v. Department of Energy*, 496 F. Supp. 57, 60-64 (D. Del. 1980); *ACLU Foundation v. Department of Justice*, 833 F. Supp. 399, 402-405 (S.D.N.Y. 1993).

Please also provide us with all non-exempt portions of all responsive records that are reasonably segregable from the withheld material, identifying the length and location of the withheld portion on the non-withheld portion of the record. 5 U.S.C. § 552(b).

If the cost of duplication of the responsive documents exceeds \$50, please contact me regarding the cost as we may prefer to review the responsive documents, and after review, bring in a copy service or pay the cost of duplication for only those documents we select. See *accord* 5 U.S.C. § 552 (a)(4)(A)(v).

Please contact me by phone at (916) 520-5254 or by email at [aboulton@downeybrand.com](mailto:aboulton@downeybrand.com) if you have any questions regarding this request, or would like to discuss how we might assist in your response to this request. We would be happy to work with you to obtain this information in an expedited manner through clarifications of any issues pertaining to these requests. Thank you for your prompt attention to this matter.

Very truly yours,

DOWNEY BRAND LLP



Ashley Boulton